STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 7, 2004
v	No. 247651 Oakland Circuit Court
RONALD KURT GRAVES, JR., Defendant-Appellant.	LC No. 2002-185387-FC

Before: Neff, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

Defendant was convicted of manufacturing or possessing with intent to deliver 650 or more grams of cocaine, MCL 333.7401(2)(a)(i), conspiracy to manufacture or possess with intent to deliver 650 or more grams of cocaine, MCL 750.157a and MCL 333.7401(2)(a)(i), and possession with intent to deliver 50 or more but less than 225 grams of cocaine, MCL 333.7401(2)(a)(iii).[1] He was sentenced to life imprisonment for the manufacturing or possessing with intent to deliver 650 or more grams of cocaine conviction, twenty to forty years' imprisonment for the conspiracy conviction, and ten to twenty years' imprisonment for the conviction of possession with intent to deliver 50 or more but less than 225 grams of cocaine, all sentences to be served consecutively. He appeals as of right. We affirm.

I

Defendant's convictions stem from an undercover operation in which the police arranged a controlled buy of cocaine from defendant by an informant. Defendant agreed to sell the informant an eighth of a kilogram of cocaine, which defendant said would be delivered by codefendant Jefferson Few to the informant in the parking lot of a bar in Pontiac. When Few arrived with the eighth kilogram of cocaine (125 grams), formed in a compressed ball known as a "big eight," police arrested him. Few later led police to an uninhabitable house, owned by Few's aunt, that was used for a cocaine operation. Defendant was arrested at the house, where police found another sixteen "big eight" balls of cocaine, as well as packaging materials, a scale, and other items associated with preparing cocaine for distribution.

[1] MCL 333.7401 has since been amended with regard to the amounts of controlled substance.

Defendant was charged on an aiding and abetting theory with possession with intent to deliver the 125 grams of cocaine seized from Few under subsection (2)(a)(iii) (50 or more but less than 225 grams of cocaine). He was charged with manufacturing or possessing with intent to deliver the "big eight" balls of cocaine seized from the house under subsection (2)(a)(i) (650 or more grams).

II

Defendant first contends that his dual convictions of manufacturing or possessing with intent to deliver 650 or more grams of cocaine and possession with intent to deliver 50 or more but less than 225 grams of cocaine violate the constitutional guarantees against double jeopardy. This is a question of law, which we generally review de novo. *People v Rodriguez*, 251 Mich App 10, 17; 650 NW2d 96 (2002). However, defendant failed to preserve this issue for appeal by raising it before the trial court. Accordingly, to avoid forfeiture of the issue, defendant must show plain error that affected his substantial rights. *People v Barber*, 255 Mich App 288, 291; 659 NW2d 674 (2003).

Multiple punishments for the same offense are prohibited by the double jeopardy protections of the federal and Michigan constitutions. US Const, Am V; Const 1963, art 1, § 15; *People v Wilson*, 454 Mich 421, 427; 563 NW2d 44 (1997); *People v Hill*, 257 Mich App 126, 150; 667 NW2d 78 (2003). Unlike double jeopardy concerns in successive prosecution cases, which address a defendant's right to be free from vexatious proceedings, the single prosecution-multiple punishment double jeopardy claim considers whether more punishment is being imposed than intended by the Legislature. *People v Jackson*, 153 Mich App 38, 42; 394 NW2d 480 (1986). Multiple punishment claims thus involve questions of legislative intent. *Id.*; see also *People v Sturgis*, 427 Mich 392, 400; 397 NW2d 793 (1986). The double jeopardy protection against multiple punishment acts as a restraint on the prosecutor and the courts, not the Legislature. *People v Robideau*, 419 Mich 458, 484; 355 NW2d 592 (1984); *People v Ford*, ___ Mich App ___; ___ NW2d ___ (Docket No. 246136, issued June 15, 2004), slip op p 2. It is a restriction on a court's ability to impose punishment in excess of legislative intent. *Robideau, supra.*

Defendant contends that his dual convictions under both MCL 333.7401(2)(a)(i) (650 grams or more) and (2)(a)(iii) (50 to 225 grams) constitute multiple punishments for the same offense. He argues that possession with intent to deliver the marijuana transported by Few and possession with intent to deliver the larger quantity of marijuana later found in the house involved the same offense of possession. Defendant asserts that he was charged with possession with intent to deliver the aggregate cocaine under subsection 2(a)(i), and cannot be charged separately for the cocaine delivered by Few, which was, in effect, "continued possession."

Defendant relies on *People v Miller*, 182 Mich App 482; 453 NW2d 269 (1990), wherein this Court held that double jeopardy protections precluded dual convictions for a drug transaction in which an undercover officer negotiated a sale of a specified amount of narcotics, but arranged for the defendant to divide that amount into two separate deliveries. *Id.* at 484. Defendant's reliance on *Miller* is misplaced.

In *Miller*, the defendant was charged with two counts of delivery of cocaine, a sample sale and a subsequent sale that same day, stemming from a single agreed-upon sale. *Id.* This

Court agreed that the separate charges violated double jeopardy protections because the facts showed "one agreed-upon transaction divided into two deliveries for the convenience of the police." *Id.*

By contrast, the instant case involves offenses that stem from different contexts and different activities. Defendant's conviction under subsection 2(a)(iii) was based on the delivery by Few, charged as possession with intent to deliver, whereas the conviction under subsection 2(a)(i) was based on the cocaine processing and packaging operation conducted at the house.

MCL 333.7401(1) prohibits several different kinds of drug-related activities, including manufacture, delivery, and possession with the intent to deliver. Defendant's and Few's possession of one-eighth of a kilogram of cocaine, with the intent to deliver it to the informant, constitutes a separate offense from the manufacture or possession of sixteen additional eighths of a kilogram found in the house and intended for future distribution. There is no double jeopardy violation if the defendant's guilt for each offense does not arise out of the same acts or conduct, or if one crime is complete before the other takes place, i.e., if separate, distinct offenses are involved. *Ford, supra* at slip op p 8; *Hill, supra* at 150. In this case, unlike in *Miller, supra,* distinct offenses are involved, arising out of different conduct. Consequently, the double jeopardy protections did not preclude separate convictions of manufacturing or possessing with intent to deliver 650 or more grams of cocaine and possession with intent to deliver 50 or more but less than 225 grams of cocaine.

II

Defendant argues that resentencing is required because the sentencing court erroneously believed that MCL 333.7401(2)(a)(i) prescribed a mandatory life sentence for offenses involving 650 or more grams of a controlled substance, and was not aware that it had discretion to impose a lesser sentence for a term of twenty or more years. We disagree.

"[T]here is no legal requirement that a trial court state on the record that it understands it has discretion and is utilizing that discretion." *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001). "Rather, absent clear evidence that the sentencing court incorrectly believed that it lacked discretion, the presumption that a trial court knows the law must prevail." *Id.*

In this case, nothing on the record suggests that the trial court erroneously believed that it lacked the discretion to impose other than a life sentence, nor is there any indication that the court reluctantly imposed the sentence only because it felt constrained to do so, in the mistaken belief that it had no other choice. On the contrary, the court's comments indicate that it exercised its discretion to impose a life sentence because it felt that such a sentence was appropriate under the circumstances. Accordingly, we find no merit to this issue.[2]

[2] Defendant has failed to argue the merits of his additional claim that that the judgment of sentence should be amended to reflect his cooperation with law enforcement. This claim is therefore abandoned. *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002).

III

Lastly, defendant challenges the trial court's denial of his motion to suppress physical evidence seized from the house and the statement subsequently obtained from defendant as "fruit of the poisonous tree." The trial court denied defendant's motion to suppress the physical evidence on the ground that he lacked standing to challenge the search of the Highland house. We find no error.

"The Fourth Amendment guarantees the right of persons to be secure against unreasonable searches and seizures." *People v Lombardo*, 216 Mich App 500, 504; 549 NW2d 596 (1996), citing US Const, Am IV; Const 1963, art 1, § 11. In reviewing a claim of a Fourth Amendment violation, the court must first ascertain whether the defendant has standing to challenge the search. *People v Powell*, 235 Mich App 557, 561; 599 NW2d 499 (1999); *People v Duvall*, 170 Mich App 701, 705; 428 NW2d 746 (1988). The test to determine whether a person has a constitutionally protected privacy interest so as to confer standing is whether he had an expectation of privacy in the object of the search and seizure and whether the expectation is one that society recognizes as reasonable. *Powell*, *supra* at 560; *Lombardo supra* at 504. The defendant has the burden of establishing standing. *Id.* at 505; *Powell*, *supra* at 561. The court deciding the issue should consider the totality of the circumstances. *Id.*

Here, defendant's only connection to the house on Highland was that he used it to prepare cocaine for distribution. Defendant demonstrated no possessory interest in the property. He used it only with the permission of Few, who himself had at best a tenuous interest. Under these circumstances, defendant had no reasonable expectation of privacy, i.e., an expectation that society would regard as reasonable. *Powell*, *supra* at 565. Defendant cannot plausibly assert that his use of property solely for criminal activity made the house his "work environment," thereby entitling him to a reasonable expectation of privacy. Accordingly, the trial court did not err in denying defendant's motion to suppress.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Brian K. Zahra